

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TECHNIWELD USA, INC.,

Plaintiff,

v.

GENERAL EQUIPMENT & SUPPLY,
INC.

Defendant.

Case No.:

COMPLAINT

Plaintiff Techniweld USA, Inc. (“Plaintiff” or “Techniweld”) files this complaint against Defendant General Equipment & Supply, Inc. (“Defendant”) and further alleges as follows:

SUMMARY OF CLAIMS

1. Plaintiff Techniweld is a Georgia corporation headquartered in Atlanta, Georgia that has been in business since 1985 and is a wholesaler and manufacturer of welding, safety, and industrial products.

2. According to its website, Defendant General Equipment & Supply, Inc. is a retailer based in South Carolina that sells “durable remanufactured construction equipment, manufacturing tools, and more.”

3. This is an action to recover unpaid invoices owed by Defendant.

4. Plaintiff Techniweld also seeks damages against Defendant for fraudulently inducing Plaintiff into providing the products to Defendant on credit based on Defendant’s material misrepresentations and omissions that it was sufficiently creditworthy to pay for the products and further false assurances that it was purchasing the products for a known and existing customer who was also sufficiently creditworthy to pay for the products at issue, all of which turned out not to be true.

5. As alleged in greater detail below, Defendant is liable to Plaintiff for breach of contract, fraudulent misrepresentation and concealment, constructive fraud, attorney’s fees and expenses, and punitive damages pursuant to O.C.G.A. §51-12-5.1.

PARTIES, JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because the parties are citizens of different States and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

7. Plaintiff Techniweld is a Georgia corporation, and its principal place of business is located at 6205 Boat Rock Blvd., Atlanta, Georgia 30336.

8. Defendant General Equipment & Supply, Inc. is a South Carolina corporation, and its principal place of business and registered agent is located at 3423 Fork Shoals Road, Simpsonville, South Carolina 29680. The injury occurred within this State and/or arose out of an act or omission by Defendant inside and/or outside of this State. Furthermore, Defendant committed tortious acts within this State. Finally, Defendant engaged in substantial and not isolated activity within this State and could reasonably have anticipated being hailed into court in Georgia. Therefore, this Court has personal jurisdiction over Defendant General Equipment & Supply, Inc.

9. Venue is proper within this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events, acts, and omissions giving rise to Plaintiff occurred in this District.

10. All conditions precedent to maintaining this action have been performed, been waived, or otherwise have been satisfied.

STATEMENT OF FACTS

11. Defendant has had a long-standing business relationship with Plaintiff.

12. In or around late-August 2022, Defendant ordered over \$160,000 in products from Plaintiff. Copies of the unpaid invoices are attached as Exhibit A.

13. At that time, however, Defendant's credit limit with Plaintiff was only \$7,500, and Defendant was required to pay for the products it purchased within thirty (30) days from the date of delivery.

14. Prior to the purchase the products, Defendant fraudulently induced Plaintiff to increase its credit limit to \$175,000 by knowingly misrepresenting that Defendant was purchasing the products for an existing and known customer who was going to pay Defendant for the products within 10 days. Defendant also knowingly misrepresented to Plaintiff that it had the financial ability to pay for the products within the standard payment terms, regardless of whether this existing and known customer paid Defendant for the products.

15. Because of their long-standing relationship, Plaintiff took Defendant at its word and increased Defendant's credit limit to \$175,000 and allowed Defendant to order the products itemized in the attached invoices on credit. Defendant also arranged for the products to be picked up from Plaintiff's warehouse so that its customer could take delivery of the products, which they did.

16. Contrary to what Defendant was telling Plaintiff at the time, Defendant obviously had concerns about the risk of non-payment by its customer. To mitigate the risk of non-payment, Defendant fraudulently induced Plaintiff to increase the credit limit to \$175,000, which shifted the risk of non-payment to Plaintiff. None of this was disclosed to Plaintiff.

17. Had Plaintiff known the truth, it would not have extended credit to Defendant, and it would have instead required Defendant to pay for the products in the ordinary course of business.

COUNT I
BREACH OF CONTRACT

18. Plaintiff restates and realleges paragraphs 1-17 as if fully set forth herein.

19. Defendant entered into a contract to purchase the products itemized in the invoices attached as Exhibit A.

20. Pursuant to Techniweld's *Terms of Service*, Defendant agreed to pay all costs of collection including reasonable attorney's fees. Under the terms, Defendant also agreed to pay a finance charge of 1.5% per month based on an annual percentage of 18% for unpaid balances after 90 days from invoice.

21. Defendant has failed to pay any amount toward the unpaid invoices.

22. As a result of Defendant's breach, Plaintiff has been damaged in an amount to be determined at trial.

COUNT II
FRAUDULENT MISREPRESENTATION / FRAUD IN THE
INDUCEMENT

23. Plaintiff restate and reallege paragraphs 1 through 17 as if fully set forth herein.

24. Defendant made material representations and/or material omissions to Plaintiff in connection with the increased credit limit and the purchase of the products.

25. Defendant knew the misrepresentations and omissions made to Plaintiff were false and/or they were reckless with respect to the same.

26. Defendant intended for Plaintiff to rely on its misrepresentations and/or omissions.

27. Plaintiff was unaware of the inaccuracies in Defendant's misrepresentations at the time it agreed to increase Defendant's credit limit and allowed Defendant to purchase the products on credit.

28. Plaintiff justifiably relied on Defendant's misrepresentations and omissions and had Plaintiff known the truth and would not have sold the products to Defendant on credit.

29. As a direct and proximate result of Defendant's misconduct, Plaintiff has been damaged in an amount to be proven at trial.

COUNT III
FRAUDULENT CONCEALMENT

30. Plaintiff restates and realleges paragraphs 1 through 17 as if fully set forth herein.

31. Defendant knowingly failed to disclose to Plaintiff material facts (and affirmatively concealed those facts), as set forth herein.

32. Defendant was under a duty to disclose all material facts in connection with the transaction at issue.

33. Defendant's omissions were material to Plaintiff's decision to extend Defendant credit for the products at issue.

34. Plaintiff justifiably relied on Defendant's omission of material facts. Had Plaintiff known the truth it would not have sold Defendant the products at issue on credit.

35. As a direct and proximate result of Defendant's misconduct, Plaintiff has been damaged in an amount to be proven at trial.

COUNT IV
CONSTRUCTIVE FRAUD

36. Plaintiff restates and realleges paragraphs 1 through 17 as if fully set forth herein.

37. Defendant acted or failed to act contrary to a legal or equitable duty, trust or confidence justly reposed, which was contrary to good conscience and operated to the injury of Plaintiff.

COUNT V
ATTORNEY'S FEES AND EXPENSES

38. Plaintiff restates and realleges paragraphs 1 through 17 as if fully set forth herein.

39. Pursuant to O.C.G.A. §13-6-11 and other provisions of Georgia law, Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation by reasons of Defendant's bad faith and stubborn litigiousness which has caused Plaintiff to incur unnecessary trouble and expense.

40. Plaintiff's terms of service also provides that Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation for collections of the invoices.

COUNT VI
PUNITIVE DAMAGES

41. Plaintiff restates and realleges paragraphs 1 through 17 as if fully set forth herein.

42. Pursuant to O.C.G.A. §51-12-5.1, Plaintiff is entitled to recover punitive damages from Defendant on the basis that Defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the court grant Plaintiff the following relief against the Defendant:

A. Enter judgment against Defendant for damages resulting from the breaches of contract(s);

- B. An award of any additional damages, consequential and incidental damages and costs suffered by Plaintiff because of Defendant's wrongful conduct;
- C. Prejudgment interest;
- D. Attorney's fees, costs of suit, including expert witness fees; and
- E. Such other and further legal and equitable relief, including exemplary damages, as his Court may deem proper.

This 10th day of May 2023.

By:

/s/ Jason R. Doss
Jason R. Doss
Ga. Bar No. 227117
jasondoss@dossfirm.com
Joy L. Doss
Ga. Bar No. 227120
joydoss@dossfirm.com
1827 Powers Ferry Road SE
Building 23, Suite 100
Atlanta, Georgia 30339
(770) 578-1314 (t)
(770) 578-1302 (f)

Exhibit A



ATLANTA
P: 800-445-2152
F: 404-699-7800

HOUSTON
P: 877-674-5586
F: 832-308-1985

JACKSON
P: 800-647-7144
F: 800-748-9973

NEWTON
P: 800-222-1113
F: 828-464-7968

YOUNGSTOWN
P: 877-286-1868
F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-351644** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 8/23/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-274611 Order Date 8/23/2022	Shipping Method
PO Number P2071	Currency USD	Incoterm 2020	Tracking Numbers PickupCINCINNATIFREIGHTWAYS.BOL#-56498	

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
PRE20		#2/0 500FT REEL BLACK WELDING CABLE P/U @ TECHNIWELD USA 6205 BOAT ROCK BLVD SW ATLANTA GA 30336	20,000	20,000	FT	0	2.32	46,400.00

Subtotal 46,400.00
Freight (5. Pick Up) 0.00
Total \$46,400.00

In accordance with Techniweld USA's Terms of Service, all billing disputes including those related to damaged product, freight claims, missing items, etc. should be handled in a timely manner. Techniweld USA allows 5 days from delivery to report concealed damage or missing items. Techniweld USA is unable to process these type of requests after that point. Proof of delivery can be provided by Techniweld USA up to 90 days after delivery. Proof of delivery after 90 days is the responsibility of the buyer to obtain.

Prepaid freight includes transportation to a commercial address with a loading dock. Lift gates, restricted access, delays, inside deliveries, appointments, call aheads, or additional restrictions will be billed separately. Thank you for doing business with Techniweld USA!

NOTE: A FINANCE CHARGE OF 1.5% PER MONTH BASED ON AN ANNUAL PERCENTAGE RATE OF 18% WILL BE CHARGED ON UNPAID BALANCE AFTER 90 DAYS FROM INVOICE.

By accepting this shipment you agree to Techniweld USA's terms of sale. If for any reason the requested shipping method is unavailable for this shipment, it will be sent best way PPC.

Returns are easy! Go to <https://www.twusa.com/customer-returns> to submit a return.

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INV-351644



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F: 800-748-9973

NEWTON
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F: 828-464-7968

YOUNGSTOWN
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F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-352452** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 8/26/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-275331 Order Date 8/26/2022	Shipping Method
PO Number P2089	Currency USD	Incoterm 2020	Tracking Numbers 1ZR95V811245238614	

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

S&B Enterprises
3841 South Ellsworth Rd
Mesa AZ 85212
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
RTP4MBP		#4Mbp Cable Connector Set	13	13	SET (1/ea)	0	11.79	153.27

	Subtotal	153.27
Freight (UPS 3rd Day Air (Customer Account))		0.00
	Total	\$153.27

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F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-352534** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 8/29/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-275284 Order Date 8/29/2022	Shipping Method
PO Number P2087	Currency USD	Incoterm 2020		Tracking Numbers pickup

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
PRE20		#2/0 500FT REEL BLACK WELDING CABLE P/U @ TECHNIWELD USA 6205 BOAT ROCK BLVD SW ATLANTA GA 30336	20,000	20,000	FT	0	2.32	46,400.00

Subtotal	46,400.00
Freight (5. Pick Up)	0.00
Total	\$46,400.00

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INV-352534

INV-353010



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F: 800-748-9973

NEWTON
P: 800-222-1113
F: 828-464-7968

YOUNGSTOWN
P: 877-286-1868
F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-355793** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 9/21/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-275617 Order Date 9/21/2022	Shipping Method
PO Number P2075	Currency USD	Incoterm 2020		Tracking Numbers 1Z3928700373426761

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
SUM780124		MAST ELEVATION LINE R-100/150 Readily Available at Sumner	6	6	EA (1/ea)	0	42.22	253.32
SUM780121		EQUALIZING LINE R-100/150 Readily Available at Sumner	6	6	EA (1/ea)	0	36.00	216.00
SUM780244		WINCH HANDLE, ASSY. WJ-47 Readily Available at Sumner	1	1	EA (1/ea)	0	45.64	45.64

Subtotal 514.96
Freight (UPS Ground (Customer Account)) 0.00
Total \$514.96

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Prepaid freight includes transportation to a commercial address with a loading dock. Lift gates, restricted access, delays, inside deliveries, appointments, call aheads, or additional restrictions will be billed separately. Thank you for doing business with Techniweld USA!

NOTE: A FINANCE CHARGE OF 1.5% PER MONTH BASED ON AN ANNUAL PERCENTAGE RATE OF 18% WILL BE CHARGED ON UNPAID BALANCE AFTER 90 DAYS FROM INVOICE.

By accepting this shipment you agree to Techniweld USA's terms of sale. If for any reason the requested shipping method is unavailable for this shipment, it will be sent best way PPC.

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F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-356035** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 9/22/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-278208 Order Date 9/22/2022	Shipping Method
PO Number P2136	Currency USD	Incoterm 2020	Tracking Numbers 1Z3928700373698432	

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
RTP2MBP		Male & Female #2 Tweco® Style Cable Connector (Set, 1/Pk, Sold by EA)	50	50	SET (1/ea)	0	10.41	520.50

Subtotal 520.50
Freight (UPS Ground (Customer Account)) 0.00
Total \$520.50

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P: 800-647-7144
F: 800-748-9973

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F: 828-464-7968

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F: 412-357-2181

Techniweld USA LLC
6205 Boat Rock Blvd
Atlanta GA 30336
P: 800-445-2152
F: 404-699-7800
EIN: 46-1587052

Invoice **INV-358929** **REMIT TO: PO BOX 44226, ATLANTA, GA 30336-1226**

Date 10/3/2022	Sales Code 159 Shane Westmore... 152 Mike Diamond	Terms of Sale NET 30 DAYS	Order # Sales Order #SO-278892 Order Date 10/3/2022	Shipping Method
PO Number p2117	Currency USD	Incoterm 2020		Tracking Numbers -----

Sold To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Ship To Address

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680
United States

Bill To

3980
GENERAL EQUIPMENT & SUPPLY
3423 FORK SHOALS RD
SIMPSONVILLE SC 29680

Item	Cust Part #	Description	Units Ord	Shipped	UoM	B/O'ed	Rate	Total
SUM780124		MAST ELEVATION LINE R-100/150	2	2	EA (1/ea)	0	42.22	84.44
SUM780121		EQUALIZING LINE R-100/150	2	2	EA (1/ea)	0	36.00	72.00
SUM780052		COUNTERWEIGHT, RAB-511	1	1	EA (1/ea)	0	119.74	119.74
SUM780244		WINCH HANDLE, ASSY. WJ-47	2	2	EA (1/ea)	0	45.64	91.28

Subtotal 367.46
Freight (5. Pick Up) 0.00
Total \$367.46

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INV-358929